

BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION

BAYS No. 33-36, SECTOR-4, PANCHKULA- 134112, HARYANA

Case No. HERC/PRO – 20 of 2018

DATE OF HEARING : 08.05.2019

DATE OF ORDER : 08.05.2019

IN THE MATTER OF:

Petition under The Haryana Electricity Regulatory Commission (Duty to supply electricity on request Power to recover expenditure incurred in providing supply and power to require security) Regulations, 2016

Petitioner Rapid Metro Rail Gurgaon South Ltd.

V/s.

Respondent 1. Dakshin Haryana Bijli Vitran Nigam, through the Managing Director, Hisar
2. Haryana Vidyut Prasaran Nigam Limited through the Managing Director, Panchkula

PRESENT

On behalf of the Petitioner: Shri R.K. Jain, Advisor/Legal & Power

On behalf of the Respondent: Shri Sachin Yadav, XEN, DHBVN

QUORUM

Shri Jagjeet Singh, Chairman

Shri Pravindra Singh Chauhan, Member

ORDER

Brief background of the Case:

1.1. The Petitioner has submitted that:

- a) They are company formed and incorporated in India under the Companies, Act 1956 having its registered office at 2nd Floor, Ambience Corporate Tower, Ambience Island, NH - 8, Gurgaon, Haryana. The Company has, authorized Shri Rajnesh Khurana to file the present petition before this Hon'ble Commission vide a validly passed Resolution.

- b) They are the first private company to have constructed private Metro Rail Corridor in Gurgaon in the State of Haryana. The Company has raised loans from Banks at commercial interest rates to finance the Project. There is absolutely no element of subsidy by Central/State Government or any international organization. The First Phase of this project covering Cyber City area was commissioned-in Nov 2013. The Company decided to extend the Metro corridor from Sikanderpur to Sector 56 along Golf Course Road Gurgaon for a length of 6.5 km with 5 stations en-route from Sikanderpur to Sector 56 Gurgaon. A Memorandum of Understanding (MoU) in this regard was signed with Haryana Urban Development Authority (HUDA) in FY 2012-13.
- c) They estimated total power requirement of 15 MVA for the project and on 16.05.2013 approached HVPNL to allocate 2 Nos. 66 KV Bays at 220 KV Sector-5 Substation for the project. HVPNL confirmed the feasibility of allocating one no. 66 KV Bay from existing 220 KV Sector-56 Substation and second one from 220kV Sector-57 Substation under construction at that time vide SE/TS/GGN office memo dated 20.01.2014.
- d) They applied for a load of 5400 KW with Contract Demand of 6000 KVA from each source for this project in July 2014 considering the need for reliable continuous power supply for Metro Rail project and deposited an Consumption Deposit (ACD) of Rs. 1.62 Cr. on 08.08.2014 @ Rs. 1500/kW for 10800 kW (5400+5400).
- e) The Distribution Licensee conveyed sanction of load vide CE/Commercial/DHBVN/ Hisar office Memo. No. Ch-30/SE/C/SOL-68 dated 01.10.2015.
- f) They submitted their comments to the Licensee on 17/03/2016 in response to the sanction letter dated 10/03/2016 wherein the Petitioner commented as follows:
- (i) DHBVN has sanctioned a total load of 10800 KW with CD 12000 KVA at 66 KV level to be fed from two independent sources. The maximum sanctioned load from each source is 6000 KVA in accordance with our

application dated 22.07.2014. The loads are proposed to be fed from 22 KV S/Stn Sector-56 and 220 KV S/Stn Sector-57.

- (ii) It is noted that S/Stn at Sector-57 is still under construction and the date of supply of load at 66 KV is not certain at the stage. The proposal to supply load from S/Stn Sector-57 may be kept in abeyance.
- g) It was noted that there was an error apparent in the sanction letter conveyed by the Distribution Licensee vide CE/Commercial office Memo. dated 01.10.2015 which read as:
 - (i) The load 10800 KW with CD 12000 KVA shall be treated as sanctioned after energization of 220/66 K proposed S/Stn. at Sector 57, Gurgaon by the HVPNL and laying of 66 KV independent feeders at the consumer Cost from both the substations i.e. 220/66 KV S/St. Sector-56) Gurgaon and 220/66 KV S/Stn. Sector-S's, Gurgaon.
 - (ii) The Consumer shall deposit one more time ACD as suppl from two different sources and each connection to be treated as separate connection.
- h) That the error in sanction letter was rectified CE/Commercial/DHBN/Delhi office memo no. 55/SE/C/SOL-68 dated 24.08.2016 in which was clarified that the connection may be released for Sector-56 substation as Sector-57 was not ready and also CD to be treated as 6000 KV A from each of the two different points of connection i.e. from Sector-56 and Sector-57. was also made clear that the ACD for both the connection i.e. 12000 KVA has already been deposited by the Petition Company. The Distribution Licensee also confirmed that the 6000KVA CD applied by Petitioner Company from Sector-5 will become effective only after the construction of 220KV Substation, Sector-57 was completed and connection released from there.
- i) That the one connection was finally released on 15.09.2016 from one source only i.e. from 220 KV Substation, Sector-56. Petitioner Company has been pursuing since then for the second source of supply from 220 KV Substation, Sector-57. Although in response to a request made by Petitioner Company on 13.10.2016, HVPNL informed the likely date of completion of Sector-57

Substation as 15.01.2017 vide XEN/TS/GG memo no. 858 dated 28/11/2016. The connection for second source has not materialized yet.

- j) That in the meanwhile, Hon'ble Commission notified the HERC/34/2016 Regulations dated 11.07.2016. In view of these Regulations, the matter of recovery of expenditure from the consumers was considered at the State Govt. level and revised instructions were issued by HVPNL vide Dy. Secy.jOp., HVPNL Memo. No. Ch.-24/DSO-214/L-154/Vol.-II dated 12.05.2017 (Annex P-IO). Through this letter, HVPNL revised its instructions dated 26.06.2007 to the following extent,
- (i) The departmental supervision charges for self-executed deposit works revised from 4% to 1.5%;
 - (ii) Cost of Augmentation of substation or creation of a new substation or Cost of Augmentation of the line feeding the substation from where the supply is to be given not to form part of Cost to be recovered from the consumer;
 - (iii) In case of independent feeders the charges of controlling equipment including Circuit Breaker, Bay, 9Ts & PTs, Isolators, Line cum Earth switch, electric line up to the consumer end is to be borne by the consumer;
- k) HVPNL has made the following Demands which are again the provisions of the Regulations:
- (i) Proportionate Cost for Augmentation of 1 x 100 MV 220/66 KV Transformer with 1 x 160 MVA Transformer at 220 KV Substation Sector-56 vide SE/TS/GGN Office memo no. Ch-109/TSG-298/Vol-II dated 09/05/2016 and deposited by the Petitioner company on 10/05/2016 under protest to ensure that the connection is released to the Petitioner Company.
 - (ii) Proportionate Cost of the new 220 KV GIS Substation Sector-57 vide XEN/TS/GGN memo no. 375 date 06/03/2018.
- l) That HVPNL has raised Demands towards Proportionate Cost of Substation. The Demand was raised vide letter dated 09.05.2016 for Rs.41,89,200/- consisting of Rs. 39,35,739/- toward Proportionate Cost for Augmentation

of Transformer Sector-56 and Rs. 2, 53, 468/- towards Supervision Charges @ 4% and Service Tax for 66 KV Bay at Sector-56.

- m) That as the Augmentation of 220 KV Substation Sector-56 was already an approved work of HVPNL, there was no justification to ask for the Proportionate Cost from Petitioner Company of this already approved work. Petitioner Company however paid this amount on 10.05.16 under protest.
 - n) That HVPNL raised a Demand of Rs.235,64,775/- vide XEN/TS/GGN office memo no. 375 dated 06.03.2018 (Annex P-13) towards Proportionate Cost of creation of 220 KV Substation Sector-57, one 66 KV GIS Bay at Sector-57 S/Stn. and supervision charge @ 4% on the Metering equipments. This Demand being against the prevalent applicable Regulations, Petitioner Company has been pursuing with the Respondents to withdraw Proportionate Cost of Sub Station from the Demand Note.
 - o) That the augmentation of Transformer of 220kV S/s Sector-56, Gurgaon was approved by HVPNL in February 2014 i.e., much before sanction load of Petitioner Company and as such was a part of the planned augmentation of the State transmission system. Hence, there is no legal right to claim share cost of this augmentation.
 - p) That as regards the erection of a new 220 KV GIS Substation Sector-57, Gurgaon, this was neither created specifically at the request of Petitioner Company nor considering the power Demand of Petitioner Company. The State Transmission Utility, under the enabling provisions of S.39 of EA-2003, is duty bound to create necessary infrastructure for smooth flow of electricity from a generating station to load centres. The Cost incidence of such works is to form part of the ARR of the Transmission Licensee and to be recovered as a part of the transmission tariff determined by the State Commission. Hence Petitioner Company is not required to bear the Proportionate Cost of the creation of sector-57 Substation.
- 1.2. The Hon'ble Commission is being approached for kind intervention in the matter under the enabling provisions of the HERC/34/2016 Duty to Supply Regulations, which empower the Commission to issue suitable orders or directions to the Respondents and has accordingly prayed as follows:

- “(i) Hon'ble Commission may please direct Respondent No. to withdraw Proportionate Cost of creation of 220 KV GI Substation, Sector-57, Gurgaon from the Demand Not raised through letter dated 06.03.2018 (Annex P-13) O Petitioner Company;*
- (ii) Hon'ble Commission may please direct Respondent No. to withdraw Proportionate Cost of Augmentation 220/66 KV Transformer of 220 KV Substation, Sector-5 , Gurgaon from the Demand raised through letter dated! 09.05.2016 (Annex P-II) on Petitioner Company an1 refund the same to the Petitioner Company...”*

Respondent No. 2 Replies

- 2.1 This Hon'ble Commission had framed HERC (Duty to Supply Electricity on request, power to recover expenditure incurred in providing supply & Power to Recover Security) Regulations, 2005 providing for various aspects of providing load to consumers and manner of sharing thereof.
- 2.2 On 28.01.2013, HVPNL constituted a committee of various officers vide office order no. 117 /DSO-43 0 /Vol- I for preparation of guidelines / norms for calculation of estimates for deposit works. The said committee went into all relevant aspects including the Regulations notified by this Hon'ble Commission, the sequence in which a consumer applies for a connection, the different practices being followed by different circles for the release of connections, the discrepancies in the methods being followed by different circles etc.
- 2.3 The committee observed some inconsistencies and that one consumer was getting disadvantaged as compared to another consumer only due to the sequence being followed by the respective consumer or the timing of application for the connection.
- 2.4 That when all these issues were discussed in detail by the Distribution Companies, the ultimate analysis was that augmentation costs should be recovered from all consumers on a normative basis so that the costs can be shared in a more realistic and fair manner. Thereafter, a Petition was drafted and filed before this Hon'ble Commission being Case No. HERC/PRO-57 of 2014 by HVPNL seeking approval of this Hon'ble Commission to the principle of charging the consumers on a normative basis.

- 2.5 The Petition was heard by the Commission on 10/11/2014. On the said date, the Commission was of the opinion that the matter pertained only to DISCOMs and therefore, the petition should be filed together by all the Distribution Companies. Therefore, HVPNL vide Memo dated 16.01.2015 sought to withdraw Petition No. 57 of 2014 which was allowed by the Hon'ble Commission vide Order dated 16.01.2015. Accordingly, the Distribution Companies have filed a Petition before this Hon'ble Commission on similar aspect which is pending before this Hon'ble Commission.
- 2.6 It is significant to the present complaint that in the meantime, to standardize the procedure} HVPNL issued the Memo No. CH-40/DSO-434/Vol.III/RAU/F-136 dated 04.09.2014 to field offices to recover the shared costs on normative basis from the consumers. The said memo dated 04.09.2014 was challenged by several consumers before this Hon'ble Commission by filing Cases No. HERC / PRO 8, 10 & 11 of 2015. After hearing the parties, the Commission decided the said petition vide the Order dated 21.09.2015.
- 2.7 Pursuant to the above Order dated 21.09.2015, the Deputy Secretary/Operations of HVPNL issued necessary instructions for withdrawal of the above Memo vide Memo Ch-22/DSO-434/Vol I/SE/RAU/F-145 dated 20.11.2015. As a consequence of the above-mentioned facts, a difficulty had arisen with respect to the cases wherein the demands for proportionate cost were processed by HVPNL according to the Memo dated 04.09.2014 as for this period, the said Memo remained in force and was implemented.
- 2.8 As a consequence of the above-mentioned facts, a difficulty had arisen with respect to the cases wherein the demands for proportionate cost were processed by HVPNL according to the Memo dated 04.09.2014 as for this period, the said Memo remained in force and was implemented.
- 2.9 The present petition filed by the Petitioner is also one of such peculiar cases wherein demand was bonafide in accordance with the previous memo.
- 2.10 Therefore, the levy of the proportionate costs of creation and augmentation of subject transmission system in the present case was justified according to the

prevailing Circular at that point of time and therefore, it cannot be called a wrongful imposition on the Petitioner.

- 2.11 It is pertinent, to mention that HVPNL and the distribution licensees are regulated entities whose tariffs are being determined by this Hon'ble Commission. Any amount of money received by HVPNL/ Distribution Companies is accounted for in the ARR / tariff and the normative amounts received from all consumers will also get reflected in the ARR / tariff. Therefore, HVPNL being a revenue neutral utility, the amounts so collected have been taken into accounts while passing the various tariff orders and the remaining amounts have already been passed on in the consumer tariff.
- 2.12 It is further submitted that HVPNL has not retained any amounts of the share cost collected from particular consumers. This has been reflected in the books of HVPNL and taken as an income of HVPNL by this Hon'ble Commission in the various tariff orders passed. This has been in the form of reduction in depreciation of the assets of HVPNL in the tariff orders.
- 2.13 It is stated that any decision which will be taken by the Commission in the above matter will have an impact on the present case. Therefore, it is urged before this Hon'ble Commission to either club the above-mentioned petition filed by HVPNL along with the present complaint or decide the above-mentioned petition first which will automatically resolve the present dispute and other similar cases.

Commission's Analysis and Order

- 3.1. The case was heard on 08/05/2019 as scheduled. The representatives of both parties were present.
- 3.2. During the hearing, Sh. R.K. Jain, counsel appearing on behalf of the Petitioner has stated before the Commission that he has been directed by his client i.e., the Petitioner company not to pursue this Petition further as per their Management decision and has accordingly requested the Commission to treat this Petition as withdrawn by the Petitioner. He also submitted copy of his letter No. 104/RMGSL/2018 dated 22/08/2018 addressed to the Secretary, HERC and CC to the MD DHBVN & MD HVPN for favor of information. The copy of aforesaid

letter was also received in the office of the Commission vide CFMS No. 2742 on 27/08/2018.

- 3.3. Sh. Sachin Yadav XEN OP S/U Division Gurugram appearing on the behalf of DHBVN has stated that they have already received the copy of the above letter of the petitioner's counsel for withdrawal of the petition.

In view of above, the Commission accepted the Prayer of the Petitioner to withdraw present Petition.

Accordingly, the Petition is dismissed as withdrawn.

This Order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 08/05/2019.

Date: 08.05.2019

(Pravindra Singh Chauhan)

(Jagjeet Singh)

Place: Panchkula

Member

Chairman